

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

July 19, 2023 at 2:00 p.m.

1. [23-21667](#)-E-11 **SOLANO COUNTY BLACK** **STATUS CONFERENCE RE :**
[CAE-1](#) **VOLUNTARY CHAMBER OF**
 COMMERCE, INC. PETITION
 5-23-23 [1]

Debtor's Atty: Le'Roy Roberson

Notes:

[LRR-1] *Ex Parte* Application to Shorten Time on Motion to Impose and/or Certify the Automatic Stay is in Effect as to All Creditors filed 5/31/23 [Dckt 21]; Order granting filed 6/1/23 [Dckt 25]

[LRR-2] Motion to Impose the Automatic [sic] filed 5/31/23 [Dckt 12]; Order denying filed 6/9/23 [Dckt 50]

Trustee Report at 341 Meeting lodged 7/11/23

<p>The Status Conference is continued to 2:00 p.m. on XXXXXXX , 2023.</p>

JULY 19, 2023 STATUS CONFERENCE

The Debtor in Possession has not filed a Status Report for the July 19, 2023 Status Conference. The First Meeting of Creditors was continued to July 17, 2023. July 11, 2023 Docket Entry Report.

This Bankruptcy Case was filed on May 23, 2023.

At the Status Conference, XXXXXXX

**SCALLIN V. U.S. DEPARTMENT OF
EDUCATION**

Plaintiff's Atty: Peter L. Cianchetta
Defendant's Atty: unknown

Adv. Filed: 2/16/23
Summons Reissued: 3/7/23
Answer: none

Nature of Action:
Dischargeability - student loan

Notes:
Continued from 5/10/23. The court continued the Status Conference in light of Plaintiff-Debtor prosecuting this Adversary Proceeding.

Entry of Default and Order Re: Default Judgment Procedures filed 5/24/23 [Dckt 12]

[PLC-1] *Ex Parte* Application for Leave to File Late Motion for Default filed 7/5/23 [Dckt 16]; set for hearing 8/24/23 at 11:00 a.m.; Order granting filed 7/6/23 [Dckt 25]

[PLC-2] Motion for Default Judgment filed 7/5/23 [Dckt 17]; set for hearing 8/24/23 at 11:00 a.m.

The Status Conference is continued to 2:00 p.m. on October 18, 2023.

JULY 19, 2023 CONTINUED STATUS CONFERENCE

Plaintiff-Debtor has filed a Motion for Entry of Default Judgment, with the hearing thereon set at 11:00 a.m. on August 24, 2023. Mtn.; Dckt. 17.

The court continues the Status Conference to allow Plaintiff-Debtor to prosecute the entry of a default judgment in this Adversary Proceeding.

SUMMARY OF COMPLAINT

The Complaint filed by Michael Scallin ("Plaintiff-Debtor"), Dckt. 1, asserts claims to determine the dischargeability of a student loan debt. Claims have been filed by the United States Department of Education in Plaintiff-Debtor's Bankruptcy Case which total \$85,803.08. It is further alleged that the total

student loan debt is in excess of \$95,193.14. The Complaint states detailed factual allegations (not mere conclusions) relating to the asserted undue hardship caused Plaintiff-Debtor by these student loan obligations.

SERVICE OF SUMMONS AND COMPLAINT

A reissued summons was obtained by Plaintiff-Debtor on March 7, 2023 (Dckt. 6). No Certificate of Service has been filed by Plaintiff-Debtor. No answer or other responsive pleading has been filed by the United States Department of Education.

On April 5, 2023, A Certificate of Service for the Reissued Summons and Complaint was filed. Dckt. 7. Service was made on March 7, 2023 on:

US Department of Education
50 United Nations Plz Ste 1200
San Francisco, CA 94102
(Certified Mail)

This is the address provided on the Roster of Governmental Agencies maintained by the Clerk of the Court and posted on the Court's website.

Answer

No answer or other responsive pleading has been filed by Defendant. The answer or other responsive pleading was to be filed on or before April 11, 2023.

At the Status Conference, counsel for the Plaintiff-Debtor reported that the request for entry of default has been uploaded. Counsel for Plaintiff-Debtor reported that he had delayed filing the request for entry of default until today, believing that someone from the Department of Education would contact him. However, no such contact was made and nobody appeared for the Department of Education at the May 10, 2023 Status Conference.

The court continues the Status Conference in light of Plaintiff-Debtor prosecuting this Adversary Proceeding.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Continued Status Conference having been scheduled, the Plaintiff-Debtor prosecuting a Motion for Default Judgment, , and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to **2:00 p.m. on October 18, 2023.**

Debtor's Atty: Mark A. Wolff

Notes:
Continued from 5/11/23

Operating Reports filed: 5/23 [Feb, Mar, Apr]

Trustee Report at 341 Meeting lodged 5/22/23

[WW-3] Debtors Application to Approve Employment of Becky Melville and Sierra Real Estate Services, Inc. file 6/6/23 [Dckt 80]; set for hrg 7/20/23 at 10:30 a.m.

Trustee Report at 341 Meeting lodged 6/12/23

[WW-4] Debtor's Application to Employ Professional - Hank Spacone filed 6/15/23 [Dckt 95]; Order granting filed 6/22/23 [Dckt 102]

Trustee Report at 341 Meeting lodged 7/10/23

Resignation of Chapter 12 Trustee filed 7/11/23 [Dckt 109]

Appointment of Successor Trustee [David Burchard] filed 7/11/23 [Dckt 110]

The Status Conference is continued to xxxxxxx on xxxxxxx , 2023.

JULY 19, 2023 CONTINUED STATUS CONFERENCE

At the Status Conference, xxxxxxx

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Continued Status Conference having been conducted by the court, and upon review of the pleadings, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to **XXXXXXX** on **XXXXXXX**, 2023.

4. [23-20380-E-12](#) **TIMOTHY WILSON** **CONTINUED MOTION TO CONFIRM**
[WW-2](#) **Mark Wolff** **CHAPTER 12 PLAN**
5-11-23 [49]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 12 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 11, 2023. By the court's calculation, 28 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(8) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1) (requiring fourteen days' notice for opposition). Additionally, Creditors holding priority claims were served on May 30, 2023. By the court's calculation, 9 days' notice was provided.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Confirm the Plan is XXXXXXXXXXXX
--

July 19, 2023 Hearing

As addressed below, this bankruptcy case is one in a long series of prior unsuccessful cases filed by Debtor. However, what has developed in this Bankruptcy Case is the genesis of an economic collaboration between Debtor and his creditors, and their respective counsel, for Debtor to preserve his exemption and non-exempt equity in excess of claims, and for creditors to be relatively promptly paid while avoiding all of the costs and expenses of having to proceed with foreclosures, taking ownership of the real property collateral (and all of the expenses that go with that), and then having to resell the real property.

A new Chapter 12 Trustee has been appointed, David Burchard, following the recent retirement of Michael Meyers, the prior Chapter 12 Trustee. He is substituting into what may be the “landmark” case for the Debtor and his creditors.

At the hearing, **XXXXXXX**

REVIEW OF MOTION AND PRIOR HEARINGS

The debtor, Timothy C Wilson (“Debtor”) seeks confirmation of the Chapter 12 Plan. The Plan provides payments beginning June 25, 2023 as follows: \$4,500 per month for 12 months followed by a lump sum payment of \$1,650,000 from the sale of Debtor’s residence, and a lump sum payment of \$405,000 from the sale of Debtor’s bare land. Plan, Dckt 47 § 7.

CREDITORS JANA PROPERTIES, LP AND JACK FARONE’S OPPOSITION

Creditors JANA Properties, LP and Jack Farone (collectively, “Creditors JANA and FARONE”) filed an opposition on May 23, 2023. Dckt. 63. Creditors JANA and FARONE object to confirmation on the grounds that:

1. **Debtor is not the borrower:**
 - a. The borrower on Creditors JANA and FARONE’s note is Ellen MacDonald, not Debtor. Debtor does not have any contractual relationship with these creditors.
 - b. Debtor is attempting to cram-down the loan of Creditors JANA and FARONE with this Plan and modify the interest to either 4% or 7%, making himself the borrower on the loan.
 - c. Debtor has provided no law that allows this type of loan modification to an obligation they are not the borrower on.

Debtor obtained record title to the Property subject to the obligation of Creditors JANA and FARONE. Debtor never formally assumed the loan obligation. Debtor has not provided applicable law allowing them to unilaterally modify contractual obligations without first assuming the responsibilities of the borrower.

The court notes that Creditor offers no legal authority that an obligation secured by property owned by a debtor is not a secured claim as established by Congress in 11 U.S.C. § 506.

§ 506. Determination of secured status

(a)

(1) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor’s interest in the estate’s interest in such property, or to the extent of the amount subject to setoff, as the case may be, and

is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. . . .

11 U.S.C. § 506(a)(1). As stated in § 506(a) the claim is a "secured claim" if the claim of the creditor it is secured by an interest in property in which the bankruptcy estate has an interest.

The term "creditor" as defined by Congress in the Bankruptcy Code includes:

(10) The term "creditor" means—

(A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor; . . .

11 U.S.C. § 101(10). Congress then defines the term "claim" as:

(5) The term "claim" means—

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

11 U.S.C. § 101(10). Congress continues in 11 U.S.C. § 102(2) and (3) to provide for the definition of claim, providing:

§ 102. Rules of construction

In this title—

. . .

(2) "claim against the debtor" includes claim against property of the debtor;

(3) "includes" and "including" are not limiting; . . .

The Supreme Court has previously addressed the broad scope of what constitutes a claim in a bankruptcy case.

We have previously explained that Congress intended by this language to adopt the broadest available definition of "claim." *See Pennsylvania Dept. of Public Welfare v. Davenport*, 495 U.S. 552, 558, 563-564, 109 L. Ed. 2d 588, 110 S. Ct. 2126 (1990); see also *Ohio v. Kovacs*, 469 U.S. 274, 279, 83 L. Ed. 2d 649, 105 S. Ct. 705 (1985). In *Davenport*, we concluded that "'right to payment' [means] nothing more nor less than an enforceable obligation" 495 U.S. at 559. 4

Applying the teachings of Davenport, we have no trouble [****15] concluding that a mortgage interest that survives the discharge of a debtor's personal liability is a "claim" within the terms of § 101(5). Even after the debtor's personal obligations have been extinguished, the mortgage holder still retains a "right to payment" in the form of its right to the proceeds from the sale of the debtor's property. Alternatively, the creditor's surviving right to foreclose on the mortgage can be viewed as a "right to an equitable remedy" for the debtor's default on the underlying obligation. Either way, there can be no doubt that the surviving mortgage interest corresponds to an "enforceable obligation" of the debtor.

Johnson v. Home State Bank, 501 U.S. 78, 83-84 (1991).

The conclusion that a surviving mortgage interest is a "claim" under § 101(5) is consistent with other parts of the Code. Section 502(b)(1), for example, states that the bankruptcy court "shall determine the amount of [a disputed] claim . . . and shall allow such claim in such amount, except to the extent that . . . such claim is unenforceable against the debtor and property of the debtor" (emphasis added). In other words, the court must allow the claim if it is enforceable against either the debtor or his property. Thus, § 502(b)(1) contemplates circumstances in which a "claim," like the mortgage lien that passes through a Chapter 7 proceeding, may consist of nothing more than an obligation enforceable against the debtor's property. **Similarly, § 102(2) establishes, as a "rule of construction," that the phrase "'claim against the debtor' includes claim against property of the debtor."** A fair reading of § 102(2) is that a creditor who, like the Bank in this case, has a claim enforceable only against the debtor's property nonetheless has a "claim against the debtor" for purposes of the Code.

Id., 85 (emphasis added).

As instructed by the Supreme Court in *United Student Air Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010), this trial court must correctly apply the law as written by Congress, whether or not either or both parties correctly state the law.

The court also notes that Creditor has filed, under penalty of perjury and subject to the statutory sanctions Proof of Claim 5-1 stating that it has a secured claim in this case. Asserting such a claim is consistent with the Bankruptcy Code and the rulings of the United States Supreme Court.

As also asserted in the Opposition, these grounds appear to relate to Debtor's: (1) ability to prosecute a Chapter 13 case, (2) Debtor's good faith in filing this case, and (3). Debtor's good faith in filing the proposed plan.

2. Debtor's treatment of Creditors JANA and FARONE is insufficient:

- a. The *Till* rate is higher than the interest rate Debtor is suggesting.

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 4.00% or 7.00%. Section 3.11 of the Plan indicates a 7.00% interest

rate while additional provisions indicate a 4.00% interest rate. Creditor's claim is secured by a Deed of Trust. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Additionally, Creditor has addressed risks factors of the Debtor being on their 6th bankruptcy case,

- b. The Plan does not include the correct loan balance owed to Creditors JANA and FARONE, which is now \$265,148.37.

Creditor's Proof of Claim is filed for \$265,148.37. Proof of Claim 5-1. Debtor's Plan indicates Creditor's claim is only for \$220,000.00. Plan, Dckt. 47 § 3.11. Pursuant to §3.04, the Proof of Claim, not the Plan, shall determine the amount and classification of a claim. Absent the Plan providing the correct amount of the Claim, Debtor cannot comply with the Plan under 11 U.S.C. § 1225(a)(6).

3. Debtor's proposed Plan is infeasible:

- a. Debtor's proposed Plan is infeasible because Debtor is scheduled to face criminal trial that could lead to incarceration and monetary fines.
- b. The income projected is insufficient to make the required *Till* payments to Creditors JANA and FARONE, as well as the secured claim of Umpqua Bank.

The court agrees that the above creates some concerns about the feasibility of the Plan. 11 U.S.C. § 1225(a)(6). Creditor's Declaration indicates there is a criminal case against Debtor set for trial July 31, 2023. Declaration, Dckt. 64. However, the funding of this Plan is from the orderly sale over the next twelve months of two real properties owned by Debtor. Even if ultimately incarcerated, a plan administrator can market and sell the property, and pay off the secured claims, as Creditors, other creditors in this case, any surplus value for Debtor. However, as discussed below, a serious financial question exists whether the properties may be sold for values in excess of the secured claims.

The following is a chart showing the properties to be sold, the values stated by Debtor, and the secured claims filed, or listed on Schedule D if no proof of claim has been filed, relating to the properties to be sold.

16030 Schaefer Ranch Road Residence		16030 Schaefer Ranch Road Bare Land		Amador County Bare Land
\$1,850,000		\$375,000		\$15,000
(\$31,134)	Property Taxes			
(\$1,491,210)	Umpqua Bank DOT	(\$265,148)	Jana Properties, LP and Jack Farone DOT	
(\$56,606)	Cal Tax Lien			
(\$75,055)	Commercial Equipment Judgment Lien			
(\$10,325)	Ellen Start, dba ABC Business Company Abstract of Jdgt			
(\$8,250)	Ellen Start, dba ABC Business Company Abstract of Jdgt			
(\$44,481)	Holt of California Jdgt Lien			
(\$4,922)	Mariecella Fiscus Jdgt Lien			
(\$20,879)	Pape Machinery, Inc. Jdgt Lien			
(\$94,000)	Shirley Sittner DOT	(\$44,073)	George and Sylvia Nlu DOT	
		(\$89,375)	Shirley Sittner DOT	
(\$45,889)	Steve Stoelk Jdgt Lien			
(\$115,259)	Susquehanna Commercial Finance, Inc. Abstract of Jdgt			
(\$33,085)	Wells Fargo Bank Jdgt Lien			
=====		=====		=====

Wednesday, July 19, 2023 at 2:00 p.m.

Rough Calculation of Gross Value Over Secured Claims				
(\$181,095)		(\$23,596)		\$15,000

4. **The proposed Plan is not fair and equitable to creditors:**

- a. The proposed Plan only proposes a monthly payment of \$500.00 to Creditors JANA and FARONE, which is insufficient to pay even the interest rate at 4%.

The additional provisions indicate Debtor will make a monthly payment of \$500 to Creditor. Even if Creditor were to agree to the 4% interest rate, the \$500 per month payment does not even cover this interest. The Plan provides to sell the Property, however, there is no indication that the Property will be sold. The insignificant Plan payment, when the loan matured 13 years ago, indicates a lack of good faith on behalf of the debtor. 11 U.S.C. § 1225(a)(3).

- b. Debtor estimates the Property's value, which will be used to fund the Plan, at \$375,000. This value is insufficient to pay all secured claims.

Debtor's secured claims against the Property total \$398,596.00. Debtor values the Property at \$375,000. Debtor intends to use the proceeds of the sale to pay off all secured claims. The Plan does not seem feasible.

TRUSTEE'S OPPOSITION

The Chapter 12 Trustee, Michael H. Meyer ("Trustee"), filed an opposition on March 24, 2023. Dckt. 71. Trustee objects on the following grounds:

1. **Duration of Debtor in Bankruptcy:**

- a. This is Debtor's sixth bankruptcy case in the last 11.99 years. Debtor has been in bankruptcy for 85% of the last 11.99 years.

A Debtor's repeat bankruptcy filing indicates the Plan is not feasible and is reason to deny confirmation. 11 U.S.C. § 1225(a)(6).

2. **341 Meeting of Creditors:**

- a. The Meeting of Creditors was held and continued to have schedules amended, operating reports filed, and documents requested provided and the Chapter 12 Plan filed.

Debtor's Meeting of Creditors has been continued to have various documents amended and filed. A failure to amend and file documents as well as complete the 341 meeting, indicates a failure to

cooperate as well as the inability to address the feasibility of the Plan. *See* 11 U.S.C. § 521(a)(3); 11 U.S.C. § 1225(a)(6). That is cause to deny confirmation. 11 U.S.C. § 1225(a)(1).

3. Chapter 12 Documents Incomplete:

- a. Creditors holding abstracts - Debtor lists six creditors as holding abstracts on Debtor's real property, however, none of these creditors are listed in the preliminary title report received from Trustee.
- b. Official Form 106-1 - Debtor filed one statement of Business Income and Expenses for multiple businesses. Each property and business shall have a separate statement.
- c. Debtor's Business Income and Expenses (Dckt. 1) indicate an anticipated income of \$12,500. Debtor's Attorney emailed a new Business Income and Expense estimating an additional \$10,000 per month in future income. Debtor has not filed this with the court.

Incomplete documents indicates a failure to cooperate and inability to assess the feasibility of the Plan. *See* 11 U.S.C. § 521(a)(3); 11 U.S.C. § 1225(a)(6). That is cause to deny confirmation. 11 U.S.C. § 1225(a)(1).

4. Chapter 7 Liquidation Analysis:

- a. Debtor's Schedules are largely incomplete and therefore it cannot be determined whether Debtor satisfies the Chapter 7 Liquidation Analysis.

Incomplete documents indicates a failure to cooperate, inability to assess the feasibility of the Plan, and inability to determine whether Debtor passes the liquidation analysis. *See* 11 U.S.C. § 521(a)(3); 11 U.S.C. § 1225(a)(6); 11 U.S.C. § 1225(a)(4). That is cause to deny confirmation. 11 U.S.C. § 1225(a)(1).

5. Failure to Provide for Value of Claim:

- a. It appears that Trustee is contesting all secured claims will be paid a significant amount more than owed at the date of filing. Objection, Dckt. 71 at 6:1-4. Trustee states this is in violation of 11 U.S.C. § 1225(a)(5)(B)(ii).

The court notes, if this is Trustee's contention, this is not in violation of 11 U.S.C. § 1225(a)(5)(B)(ii), as (a)(5)(B)(ii) requires only that the value, as of the effective date of the Plan, is **not less** than the allowed amount of such claim. However, Debtor should not be overpaying claims.

6. Not Proposed in Good Faith:

- a. Debtor's failure to disclose assets and liabilities suggests the Plan has not been proposed in good faith.

7. Failure to Make Plan Payments:

- a. Debtor may only have an average monthly income of \$3,699.67, as Debtor included a one-time payment of \$8,000 from PG&E in their Monthly Operating Report to "fix roads." \$3,699.67 underfunds the Plan.

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1225(a)(6). Trustee estimates Debtor's Plan payments should be at least \$5,163.04, while their net income may be only \$3,699.67. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

CREDITOR UMPQUA'S OPPOSITION

Creditor Umpqua Bank ("Umpqua"), filed an objection to confirmation on May 25, 2023. Dckt. 73. Umpqua objects on the following grounds:

1. Amount of Umpqua's Claim:

- a. Umpqua's Proof of Claim is for \$1,492,120.15. Additional provisions reference this figure, however, the body of the Plan only references \$1,000,000.

Creditor's Proof of Claim is filed for \$1,492,120.15. Proof of Claim 3-1. Debtor's Plan indicates Creditor's claim is only for \$1,000,000, however, the additional provisions note the correct claim amount. Plan, Dckt. 47 § 3.11, § 7. The terms should be consistent throughout the Plan to ensure Debtor can comply with the Plan.

Pursuant to §3.04, the Proof of Claim, not the Plan, shall determine the amount and classification of a claim. Absent the Plan providing the correct amount of the Claim, Debtor cannot comply with the Plan under 11 U.S.C. § 1225(a)(6).

2. Interest Rate:

- a. Debtor's Plan provides a 4.25% interest rate for Umpqua's claim. This is below the *Till* rate. Umpqua lists significant risks that are unique to this case which they argue favor an increased interest rate.

As the court has noted previously, the court agrees that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Additionally, Creditor has addressed risks factors of the Debtor being a repeat filer, being in their sixth reorganization case, being three years beyond their maturity date, Debtor's Plan hinging on Debtor's ability to sell their real property, and Debtor facing a ten-year minimum mandatory incarceration, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 7.75%, plus a 1.25% risk adjustment,

for a 9.00% interest rate. The objection to confirmation of the Plan on this basis is sustained. *See* 11 U.S.C. § 1225(a)(5)(B)(ii).

3. Insufficient Plan Payments:

- a. The Plan proposes to pay only \$2,650.00 to Umpqua's claim. This is not sufficient and does not even cover interest on the \$1,492,120.15 claim.

The additional provisions indicate Debtor will make a monthly payment of \$2,650.00 to Creditor. The Plan provides to sell the Property, however, there is no indication that the Property will be sold. The Plan payment is insignificant compared to the \$1,492,120 claim. Even if this claim were amortized over 30 years with 0% interest, Debtor would need to pay \$4,145 per month. The payment indicates a lack of good faith on behalf of the debtor. 11 U.S.C. § 1225(a)(3).

4. Infeasible Plan:

- a. The Plan is infeasible because Debtor cannot pay the dividend promised to unsecured claims.
- b. Debtor's Plan proposes payments for \$4,500 per month. The actual payments in the Plan add up to \$4,750 per month and with Trustee fees the payments are estimated at \$5,163.04 per month. Debtor has projections of income, outlined in Dckt. 60, however, Debtor does not provide cash flow projections to determine if the Plan is feasible.
- c. Debtor's Amended Income and Expense Statement indicates \$0 in Gross Business Income in the previous 12 months. Debtor is estimating \$22,187.00 in estimated future gross income. With expenses, Debtor is estimating an average net income of \$14,170.00. Creditor cannot determine whether projections for business are reasonable without Debtor's actual income amounts from the prior 12 months.
- d. Debtor's tax returns from 2020 and 2021 indicate significant income from the sale of timber. Debtor states in their feasibility declaration that they are not anticipating selling timber. Debtor does not provide an explanation of how they are going to replace the substantial income.
- e. Debtor's Amended Schedule I indicates a net income from rental property, business, or farming operations of \$17,170.00. Debtor's prior Chapter 13 case indicates only a \$6,000 net income in this category. Case No. 22-22415, Schedule I Dckt. 10 at 11. Debtor does not indicate how they have increased their net income by over \$11,000, when there was only five (5) months

between filing Debtor's previously dismissed Chapter 13 case and the current case.

- f. Umpqua provides Debtor's Residential Listing Agreement where Debtor has listed their real property commonly known as 16030 Schaefer Ranch Rd, Pioneer, California ("Property") for a price of \$2,250,000. Exhibit B, Dckt. 75. Debtor's Modified Residential Listing Agreement lists the Property at \$2,125,000. Exhibit C, Dckt. 75. Umpqua notes, in Debtor's Chapter 13, Debtor lists the Property as having a value of \$772,000. Case No. 22-22415, Schedule A/B, Dckt. 12. Debtor has not provided information as to why the Property's value has increased in the five (5) months between the filing of the Chapter 13 case and Chapter 7. When Debtor was asked about the listing price of \$2,125,000, Debtor was not able to provide an explanation. The court notes, Debtor's current case indicates the Property has a value of \$2,225,000. Schedule A/B Dckt. 1.

The court agrees that the above concerns that the Plan is not feasible under 11 U.S.C. § 1225(a)(6). Without Debtor amending their Chapter 12 documents, and providing explanations to various discrepancies, the court cannot address the feasibility of the Plan and whether Debtor will be able to make Plan payments and comply with the Plan. This is reason to deny confirmation. 11 U.S.C. § 1225(a).

Continuance of Hearing

At the hearing the Debtor in Possession, Creditors, and their respective Counsel had a productive discussion of possible amended plan terms, including the appointment of an independent plan administrator for the purpose of promptly selling, in a commercially reasonable manner, the real property of the Debtor.

The court continues the hearing to allow these productive discussions to proceed and develop. In light of these constructive discussions and what appears to be the idea for a plan to bring to a conclusion the numerous filing of bankruptcy cases, protect what exempt equity may exist for Debtor, and possibly provide some distribution to creditors holding junior secured claims and unsecured claims, the court determines that cause exists to extend the deadline for confirmation of the Chapter 12 Plan.

Further Continuance of Hearing

On June 22, 2023, the court continued the hearing on the Motion to Confirm the Plan to July 19, 2023. Order, Dckt. 103. Additionally, the court extended the deadline for confirming the Chapter 12 Plan to and including August 31, 2023, which may be further extended by order of the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 12 Plan filed by Timothy C Wilson (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Plan is **XXXXXXX**

FINAL RULINGS

5. [20-00202-E-0](#) IN THE MATTER OF THOMAS CONTINUED STATUS CONFERENCE
[RHS-1](#) OSCAR GILLIS, FEE RUBRIC RE:
RECOVERY OF OVERPAYMENT OF
LEGAL FEES AND ENFORCEMENT OF
FEE RUBRIC ORDER AND RELATED
ORDERS
6-23-22 [\[248\]](#)

Final Ruling: No appearance at the July 19, 2023 Status Conference is required.

Notes:
Continued from 4/13/23

The Status Conference is continued to 1:30 p.m. on September 12, 2023.

JULY 19, 2023 STATUS CONFERENCE

The Court's Orders establishing the Group of Mr. Gillis' Former Clients who may participate in the distribution from the monies deposited with the Clerk of the Court have been entered and the Clerk of the Court has transmitted the Notice to file the Request for Payment. Dckt. 295.

The Clerk of the Court reports that this Court's Distribution Order and the forms for requesting a distribution were mailed out to 61 of Mr. Gillis' Former Clients. As of the morning of July 17, 2023, 26 requests for disbursement forms from Mr. Gillis' Former Clients had been received by the Clerk. The deadline for returning the forms is July 17, 2023, with the Clerk waiting several days thereafter to allow for any "delayed in the mail" forms to arrive.

The court continues the Status Conference to 1:30 p.m. on September 12, 2023. The Clerk of the Court shall file on or before September 5, 2023, a written report of the request for distribution forms received, the list of Former Clients to whom distributions have been made, and any uncashed checks or other nonacceptance of payment.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Continued Status Conference in the Thomas Gillis Matter having been scheduled, the Clerk of the Court reporting that the deadline for the Clerk receiving requests for distribution from the monies held by the Clerk, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to 1:30 p.m. on September 12, 2023. On or before September 5, 2023, the Clerk of the Court shall file a Report that includes identifying the Former Clients for whom distribution forms had been received, the amount of the distributions made by the Clerk to the Former Clients, and any uncashed checks or other nonacceptance of payment for distributions made by the Clerk of the Court.

6. [23-21822-E-12](#) **RUSSELL LESTER**

**STATUS CONFERENCE RE:
VOLUNTARY PETITION
6-2-23 [1]**

[CAE-1](#)

CONTINUED TO 8/8/23 AT 10:30 A.M.

Final Ruling: No appearance at the July 19, 2023 Status Conference is required.

Debtor's Atty: Brian S. Haddix

Notes:

[CAE-1] Order Continuing Status Conference filed 7/5/23 [Dckt 82] Continued to 8/8/23 at 10:30 a.m. (specially set day and time to be hearing in conjunction with motion for use of cash collateral).

<p>The Status Conference has been continued to 10:30 a.m. on August 8, 2023, pursuant to prior order of the court.</p>

ORTEGA ET AL V. TEDESCHI

Final Ruling: No appearance at the July 19, 2023 Status Conference is required.

Plaintiff's Atty: Peter G. Macaluso
Defendant's Atty: unknown

Adv. Filed: 2/27/23
Answer: none

Nature of Action:
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:
Continued from 6/21/23. The court continued the status conference in light of the entry of the default and Plaintiff-debtor proceeding with the filing of the motion for default judgment.

Motion for Entry of Default Judgment for Quite Title and for Attorney's Fees and Costs filed 7/3/23 [Dckt 21]; set for hearing 8/24/23 at 11:00 a.m.

Plaintiff's Status Statement filed 7/4/23 [Dckt 26]

<p>The Status Conference is continued to 2:00 p.m. on October 18, 2023.</p>
--

JULY 19, 2023 STATUS CONFERENCE

Plaintiff-Debtor's Motion for Default Judgment is set for hearing on August 24, 2023. Mtn.; Dckt. 21.

The court continues the Status Conference to allow for the prosecution of the Motion for Default Judgment.

JUNE 21, 2023 STATUS CONFERENCE

On June 7, 2023, the court entered the default of Defendant George Tedeschi in this Adversary Proceeding. Dckt. 16. The Plaintiff-Debtor must now proceed with the filing of a motion for a default judgment within thirty days of the entry of the default of the Defendant.

The court continues the Status Conference in light of the entry of the default and Plaintiff Debtor now proceeding with the filing of the motion for a default judgment.

MAY 10, 2023 STATUS CONFERENCE

Summary of Complaint

The Complaint filed by Martin and Maria Ortega (“Plaintiff-Debtor”), Dckt. 1, asserts claims to determine the extent of a lien and breach of contract. It is alleged that Defendant George Tedeschi has a secured claim which was provided for in Plaintiff-Debtor’s Chapter 13 Case. Plaintiff-Debtor made plan payments to Defendant. Plaintiff-Debtor has completed the Chapter 13 Plan, has proceeded with a sale of the property securing Defendant’s claim, and disputes the amount of the balance remaining on Defendant’s secured obligation.

For the First Cause of Action Plaintiff-Debtor seeks the determination of the extent, validity, and priority of Defendant’s lien and the proper application of the Chapter 13 Plan payments received by Defendant. This focuses on \$85,218.00 which Plaintiff-Debtor states were principal payments made pursuant to the confirmed Chapter 13 Plan on the obligation owed to Defendant as amended by the confirmed Chapter 13 Plan.

The Second Cause of Action asserts a breach of contract claim against Defendant for the failure to properly apply the Chapter 13 Plan payments on the secured claim as amended by the confirmed Chapter 13 Plan.

Plaintiff-Debtor seeks recovery of contractual attorney’s fees

Summary of Answer

No Answer or other responsive pleading has been filed by Defendant George Tedeschi.

Final Bankruptcy Court Judgment

Plaintiff-Debtor alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 3, 4, Dckt. 1. Further, that this Action necessarily requires the enforcement of this court’s order confirming the Chapter 13 Plan, enforcement of the provisions of the Plan, and determination of the proper application of the payments as provided in the Chapter 13 Plan.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Continued Status Conference having been scheduled, the Plaintiff-Debtor prosecuting a Motion for Default Judgment, , and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to **2:00 p.m. on October 18, 2023.**